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Rec'd PCT/PTO 08 OCT 2004

**CONVENTION CONCERNING INTERNATIONAL COLLABORATION
IN THE FIELD OF PATENTS**

Sender: THE AUTHORITIES ENTRUSTED WITH THE
PROVISIONAL INTERNATIONAL EXAMINATION

To:

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PCT

**COMMUNICATION CONCERNING THE
FORWARDING OF THE
PROVISIONAL INTERNATIONAL
OFFICE ACTION**

(Regulation 71.1 of the PCT)

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| | | Mailing Date: (month/date/year) 7-22-2004 |
| File No. of the Applicant or Attorney 1889/PCT | | IMPORTANT COMMUNICATION |
| International File No.: PCT/CH 02/00199 | International Filing Date (Month/Day/Year) 4-9-2002 | Priority Date (Month/Day/Year) 4-9-2002 |
| Applicant: SYNTHES AG CHUR, et al. | | |

1. The Applicant is informed that the authorities, entrusted with the Provisional International Examination, are forwarding to him herewith the Provisional International Office Action, if applicable together with the associated appendixes, which was prepared in connection with the International Application.
2. A copy of the Office Action, if applicable together with the associated appendixes, will be forwarded to the International Office in order to be sent to all the Offices selected.
3. At the request of a selected Office, the International Office will prepare a translation of the Office Action (but not of the appendixes) into English and forward it to this Office.

4. REMINDER

For entry into the National phase, the Applicant must undertake certain actions at each of the Offices selected within 30 months of the priority date (or even later in the case of some Offices) (submitting translations and paying national fees) (Article 39 (1)) (See also the information forwarded by the International Office in form PCT/IB/301)

If a translation of the International Application has to be forwarded to a selected Office, then this translation must also contain translations of all appendixes to the Provisional International Office Action. It is the responsibility of the Applicant to have such translations prepared and to pass them on directly to the selected Offices in question.

Further details concerning the relevant deadlines and requirements of the Offices selected are given in Volume II of the PCT manual for applicants.

The Applicant is referred to Article 33(5), in which it is explained that the criteria for novelty, inventive activity and commercial applicability, which are described in Article 33(2) to (4), are of significance only for the Provisional International examination and that

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| Name and address of the authorities entrusted with the Provisional International Examination European Patent Office D-80298 Munich | Authorized Employee J. Hoogland |
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"each treaty country (...) can set up additional or different distinguishing features for deciding the patentability of the claimed invention in this country (refer also to Article 27(5)). With the exception of patentability, for example, such additional distinguishing features can also relate to requirements for the disclosure of the invention, as well as to clarity and support for the claims.

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PROVISIONAL INTERNATIONAL OFFICE ACTION

(Article 36 and Regulation 70 of the PCT)

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| File No. of the Applicant or Attorney 1889/PCT | FURTHER PROCEDURE see communication concerning the mailing of the provisional Office Action (Form PCT/IPEA/416) | |
| International File No.: PCT/CH 02/00199 | International Filing Date (Month/Day/Year) 4-9-2002 | Priority Date (Month/Day/Year) 4-9-2002 |
| International Patent Classification (IPC) or national classification and IPC A61B1/82 | | |
| Applicant SYNTHES AG CHUR et al. | | |

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| 1. The Provisional International Office Action was prepared by the Authorities entrusted with the Provisional International Examination. |
| 2. This REPORT comprises a total of 7 pages, including this cover sheet. |
| <input type="checkbox"/> Moreover, APPENDICES are enclosed with the Office Action; these are pages with specifications, claims and/or drawings, which were changed and on which this report is based, and/or pages with corrections made (see Regulation 70.16 and Section 607 of the PCT administrative guidelines) |
| These appendixes comprise a total of pages. |
| 3. This report contains information and the pages corresponding to the following items: |
| I <input checked="" type="checkbox"/> Basis for the report |
| II <input type="checkbox"/> Priority |
| III <input type="checkbox"/> An expert opinion concerning the novelty, inventive activity and commercial applicability has not been prepared |
| IV <input type="checkbox"/> Lack of uniformity of the invention |
| V <input checked="" type="checkbox"/> Justified determination according to Article 35(2) with respect to the novelty, the inventive activity and the commercial applicability; documents and declarations in support of this determination |
| VI <input type="checkbox"/> Particular documents listed |
| VII <input type="checkbox"/> Particular deficiencies in the International Application |
| VIII <input type="checkbox"/> Particular comments concerning the International Application |

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|--|---|
| Date on which Application was filed 9-19-2003 | Date on which this report was prepared 7-22-2004 |
| Name and address of the authorities entrusted with the Provisional International Examination European Patent Office D-80298 Munich | Authorized Employee J-C Assion |

I. Basis for the Report

1. This report was drawn up on the basis (*substitute pages, which were presented to the Patent Office upon request according to Article 14, are regarded within the scope of this report as "having been submitted originally" and are not enclosed with it, because they do not contain any changes*) of:

Specification, pages:

1 - 7 Original version

Claims, No.:

1 - 11 Original version

Drawings, pages:

1/5 - 5/5 Original version

V. Justified determination according to Article 35(2) with respect to the novelty, the inventive activity and the commercial applicability; documents and explanations in support of this determination

1. Determination

Novelty (N) Yes: Claims 1 - 11

No: Claims

Inventive Activity (ET) Yes: Claims 1 - 11

No: Claims

Commercial Applicability (GA) Yes: Claims 1 - 11

No: Claims

PROVISIONAL INTERNATIONAL

International File No. PCT/CH

OFFICE ACTION - SUPPLEMENTARY SHEET

02/00.199

Regarding Item V.

Justified determination according to Article 35(2) with respect to the novelty, the inventive activity and the commercial applicability; documents and explanations in support of this determination

1. Reference is made to the following documents:

D1: US patent 5,810,832

D2: US patent 5,851,209

- 2.1 Document D1 is regarded as the closest state of the art to the object of claim 1. It discloses a device for guiding a cerclage about a bone (title of D1, referral also to FIG. 4), which has the distinguishing features of paragraphs A) and B) of claim 1.
- 2.2 The object of claim one differs owing to the fact that the central borehole at the front end of the shaft has an angled central axis with respect to the central axis of the shaft, so that the guide wire at the front end of the shaft is angled with respect to the central axis of the shaft (paragraph C).
The object of claim 1 accordingly is new (Article 33 (2) of the PCT).
- 2.3 The objective, which is to be at companies with the present invention, is to guide to the wire about a bone.

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2.4 Admittedly, document D2 is also concerned with this objective. However, it discloses a shaft, which is curved at its distal end.

The technical solution of claim 1 moreover has the advantage that the shaft is straight. Accordingly, the size of the incision is smaller.

the distinguishing feature of claim 1 therefore is based on an inventive activity (Article 33(3) of the PCT).

2.6 Claims 2 to 11 are dependent on claim 1 and, with that, also fulfill the requirements of the PCT with respect to novelty and inventive activity. One